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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WT Docket No. 09-119
	)	
Applications of Atlantic Tele-Network, Inc. and Verizon Wireless	)	File Nos. 0003858521, *et al.*, ITC-ASG-20090616-00286, *et al.*
	)	
For Consent To Assign or Transfer Control of Licenses and Authorizations	)	

FILED/ACCEPTED

AUG 27 2009

Federal Communications Commission
Office of the Secretary

To: The Secretary
Office of the Secretary
Federal Communications Commission

REPLY OF CHATHAM AVALON PARK COMMUNITY COUNCIL TO JOINT OPPOSITION OF ATLANTIC TELE-NETWORK AND VERIZON WIRELESS

Chatham Avalon Park Community Council ("Petitioner" or "CAPCC"), by its attorneys and in accordance with the Commission's Public Notice, hereby replies to the Joint Opposition ("Opposition") of Atlantic Tele-Network, Inc. ("ATNI") and Verizon Wireless to the Petition to Deny filed by CAPCC. CAPCC petitioned to deny applications filed for consent to assign or transfer control of licenses and authorizations under the above-captioned docket and file numbers for the divestiture of certain assets of Verizon Wireless ("Divestiture Assets") to ATNI as part of a series of transactions that would reorganize the service areas of Verizon Wireless and AT&T (the "Divestiture Applications").[1] This transaction is particularly significant to CAPCC because

[1] *See Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations,* WT Docket No. 09-119, Public Notice, DA 09-1515 (rel. July 9, 2009). CAPCC submitted a Petition to Deny in the related Verizon Wireless-AT&T proceeding. *CAPCC Petition to Deny Verizon-AT&T Applications*, WT Docket No. 09-104, filed July 20, 2009 [hereinafter "*CAPCC Verizon-AT&T Petition to Deny*"]. Because CAPCC believed that issues raised therein were relevant to the instant proceeding, CAPCC incorporated by reference the *CAPCC Verizon-AT&T Petition to Deny* in its its Petition to Deny in this

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it, together with the proposed Verizon Wireless-AT&T transaction, would foreclose what could be the last meaningful opportunity for socially disadvantaged businesses ("SDBs") to enter the wireless business and provide community-focused service.

I. The Opposition Failed to Show Why the Commission Should Not Deny the Divestiture Applications and Require Verizon Wireless to Conduct a Divestiture Process That Provides Appropriate Meaningful Consideration for Potential SDB Buyers.

In its Petition, CAPCC demonstrated why Verizon Wireless's divestiture process denied SDBs any meaningful opportunity to participate in the purchase of the Divesture Assets and why, as a result, the proposed divestitures to closely associated large telecommunications companies lack sufficient public interest justification. For that reason, the Commission should deny the Divestiture Applications and require Verizon Wireless to conduct a divestiture process that provides appropriate, meaningful consideration for potential SDB buyers of these assets. At a minimum, as CAPCC pointed out, that process should include a right of first refusal for SDBs.

The Opposition has failed to show why the Commission should not deny the Divestiture Applications and require Verizon Wireless to conduct a divestiture process that provides meaningful consideration for potential SDB buyers. The Opposition's arguments against that relief can be summarized as follow: (1) the Communications Act supposedly precludes it; (2) the Commission's admonitions about facilitating sales to SDBs and new entrants were merely pious advice that no one was supposed to take seriously; and (3) it is all the Commission's fault

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proceeding [hereinafter the "*Petition*"]. CAPCC believes its Reply to Opposition to Petition to Deny in that proceeding [hereinafter "*CAPCC Verizon-AT&T Reply*"] similarly addresses issues highly relevant to this proceeding and, for that reason, incorporates that pleading into this submission by reference, and has attached a copy hereto as Appendix 1. Verizon Wireless claims that the proposed AT&T and Atlantic Tele-Network, Inc. transactions will allow it to meet the divestiture conditions of the Verizon-Alltel Order, for which reconsideration remains pending. *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17518 (rel. Nov. 10, 2008) [hereinafter the "*Verizon-Alltel Order*"], *reconsideration pending.*

because Verizon Wireless solicited proposals from SDBs and new entrants, but – in the end – it needed to pick an established carrier with which it was familiar, even over SDB bidders offering higher per-POP prices, because of pressure from the Commission and the Department of Justice. As demonstrated below, the first and last of these arguments border on the ridiculous and the second is all too revealing about Verizon Wireless's approach to conforming to the Commission's public interest analysis in the *Verizon-Alltel Order*.

A. The Communications Act in No Respect Precludes the Remedy That CAPCC Proposes

Contrary to statements in the Opposition, nothing in the Communications Act precludes the relief that CAPCC proposes – certainly not the provisions of Section 310(d) forbidding the Commission from considering whether a transfer to another buyer would better serve the public interest. Rather, as CAPCC pointed out, Verizon Wireless's refusal to heed the Commission's admonition and advance the public interest by providing a meaningful opportunity for participation in the process for sale means that a transaction without any significant public interest benefits fails to reach the mark.

Parallel circumstances arise under other aspects of the Commission's regulations and have never been found to violate the Section 310(d) prohibition on the Commission's consideration of whether a sale to others would better serve the public. For example, the Commission's "failing station" doctrine for broadcast licensees under Section 73.3555 of the Commission's rules asks this exact question. Under that doctrine, the Commission will permit a sale of a station in serious financial difficulty to a buyer that owns another station in the same market if the parties can show that the transaction would serve the public interest. Essential to that showing is a demonstration that, before agreeing to sell to an in-market buyer, the seller engaged in a serious, *bona fide* effort to locate a third party out-of-market purchaser and could not obtain purchase offers except at distress prices. If the assignor cannot document that it made

a *bona fide* effort and nevertheless failed to obtain comparable offers, the Commission denies the application as contrary to the public interest. Such a denial, however, does not contravene Section 310(d) because it does not arise from the Commission's comparative public interest evaluation of another applicant. Rather, the denial results from the failure of the applicant to follow Commission procedures to determine whether out-of-market purchasers were available, and the failure to follow those procedures precludes the applicant from meeting the public interest standard.

Similarly, CAPCC has not asked the Commission to consider in this proceeding whether a sale of the Divestiture Assets to some other party would better serve the public interest. Rather, CAPCC has maintained that the failure of Verizon Wireless to heed Commission admonitions that would have advanced the public interest means that an application with negligible public interest benefits has failed to make the showing necessary for a grant.

B. The Opposition Demonstrates That Verizon Wireless Disregarded the Commission's Admonition to Assist Socially Disadvantaged Businesses Seeking to Acquire the Divested Markets.

In the *Verizon-Alltel Order*, the Commission, in explaining its public interest concerns, admonished "Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets and/or accessing spectrum, to the extent possible." CAPCC's Petition demonstrated that Verizon Wireless ignored the Commission by failing to take any real steps to address the specific barriers faced by SDBs.

The Opposition describes a process designed to give the appearance of seeking SDB buyers without actually giving them a reasonable chance to purchase the divested systems.[2]

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[2] For instance, Verizon Wireless claims that it asked the Minority Media and Telecommunications Council to identify businesses that might bid, that it asked an unusually large number of potential buyers to participate in the second round of bidding and that it

What Verizon Wireless did not do was to take any realistic steps to overcome the acknowledged disadvantages that SDBs face in the financing marketplace. Despite Verizon Wireless's claims, there is nothing at all in the Opposition that contradicts any of the factual statements in the CAPCC Petition. Verizon Wireless did not provide a period of exclusive negotiation for SDBs, did not permit SDBs to bid without proof of full financing, did not give any SDBs a right of first refusal, and did not choose to break the divested markets into smaller groupings (except to help AT&T) to encourage bids by smaller businesses. All Verizon Wireless did, according to the Opposition, was tell SDBs that they could bid on the same terms as other parties (and even that proved to be illusory).

Perhaps aware that these steps were mere window dressing, Verizon Wireless and ATNI provide flimsy excuses for the failure to succeed in attracting a successful minority bid – Verizon Wireless wanted to be sure the transaction would be approved promptly and SDBs lack the same access to financing as AT&T and ATNI, Verizon Wireless's chosen recipients of Divestiture Assets.[3] However, neither of these claims makes any sense.

As explained in CAPCC's Petition, by demanding financing before it would negotiate a transaction, Verizon Wireless effectively shut out SDBs.[4] Verizon Wireless knows this is true, and even has acknowledged that SDBs have more difficulty than other buyers in obtaining financing before the deal terms are set.[5] By insisting on pre-approved financing, Verizon

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provided information to SDBs before those SDBs had signed non-disclosure agreements or formally expressed interest. By Verizon Wireless's own account, these efforts led to exactly one additional minority-controlled bidder (out of more than 70 bidders overall) and exactly one additional minority-controlled bidder (out of 20) in the second round of bidding. *See Opposition*, at 14-20.

[3] *Opposition*, at 20.

[4] *Petition, Appendix 1*, at 6.

[5] *Opposition*, at 18-19.

Wireless ensured that it would not give SDBs an opportunity to secure any of the divested systems.[6] At the same time, financing will not delay grant of an application. Whether or not an applicant has financing at the time it agrees on the terms of the transaction is irrelevant to Commission consideration.

The Opposition claims that Verizon Wireless's failure to "implement mechanisms to assist" SDBs should not be considered because doing so was not a specific condition of the *Verizon-Alltel Order*. This claim misapprehends the impact of the Commission's admonition to address these issues. While there was not a specific condition, it also is plain that the Commission concluded that Verizon Wireless's willingness to address the barriers faced by SDBs is an issue that must be considered as part of the public interest analysis in this proceeding. Moreover, the *Verizon-Alltel Order* specifically states that interested parties should wait until this proceeding to address questions concerning "the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest, including diversity issues."[7] In contrast to the Opposition, CAPCC does not read the Commission's words as just meaningless pious advice and posturing. Rather, the Commission put Verizon Wireless on clear notice that it would be accountable for demonstrating that its divestiture transactions meet the Commission's public interest standards, expressly including consideration of the Commission's diversification policy as an element of that public interest showing. Moreover, notwithstanding the Opposition's contention that constraints the Commission placed on the transaction "inhibited the likelihood of success of a minority-owned business or socially

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[6] Verizon Wireless claims that "requiring such committed financing is customary[.]" *Opposition*, at 20. The declaration of Morgan Stanley, Verizon Wireless's advisor, fails to support, or even mention, that claim. While it is customary to require financing before execution of final transaction documents, parties often agree on the terms of a transaction before financing is arranged.

[7] *Verizon-Alltel Order*, 23 FCC Rcd at 17518.

disadvantaged entity and . . . required Verizon Wireless to look beyond just the dollar amount of a bid in selecting a buyer,"[8] CAPCC submits that Verizon Wireless cannot blame its own failings on the Commission.

Given the Commission's repeated conclusion that increasing diversity is a vital public policy goal, one mandated by Congress in Sections 257, 309(i) and 309(j) of the Communications Act and pursued by the Commission for years, Verizon Wireless's failure to heed the Commission's request in the *Verizon-Alltel Order* has significant public interest implications.[9] Verizon Wireless's decision not to advance this vital goal – despite specific instruction from the Commission – weighs heavily against a finding that the transaction is in the public interest. In fact, Verizon Wireless's cynical handling of the divestiture process, in light of the Commission's admonition, is a rather telling indication of its commitment to diversity.

Moreover, there is almost nothing to weigh on the other side of the equation. Most of the claimed benefits of the transaction relate to increasing choices for wireless consumers, but those are benefits of the divestiture, which already was required, not of a sale to Atlantic Tele-Networks. Since all of these benefits already are assumed by the *Verizon-Alltel Order,* claiming them here is superfluous.

II. The Facts Justify an Investigation into the Circumstances of Verizon Wireless's Proposed Sales of the Divestiture Assets.

CAPCC's Petition showed that an investigation into the circumstances of the proposed transaction is necessary to determine whether, through this and related transactions, Verizon Wireless and AT&T are engaging in anticompetitive or otherwise inappropriate behavior in the negotiations that led to this transaction, the proposed swap of Verizon Wireless assets with AT&T, and the proposed sale of Centennial assets from AT&T to Verizon. There are significant

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[8] *Opposition*, at 18-19.

[9] *Petition, Appendix 1*, at 8.

questions about how Verizon Wireless conducted itself in selecting the buyers for the Divestiture Assets, and the market exchanges proposed by Verizon Wireless and AT&T suggest an intent to divide the wireless market between the two largest competitors, not to compete with each other. Accordingly, for the reasons set forth in the Petition and in the CAPCC Verizon-AT&T Reply, the Commission should invoke its Section 403 authority and investigate all of the circumstances involved in the proposed Verizon Wireless, AT&T and Atlantic Tele-Network transactions before taking any action on the Divestiture Applications. A systematic investigation into the reasons why Verizon Wireless failed to identify even a single SDB purchaser for any of the Divestiture Assets also would provide the Commission with valuable information on how SDBs and new entrants can be brought more effectively into ownership positions in the telecommunications industry.

III. If the Commission Accepts Verizon Wireless's Interpretation of Section 310(b)(4), It Must Apply That Interpretation to All Applicants

In its Petition and in the CAPCC Verizon-AT&T Reply, incorporated herein by reference, CAPCC has explained why acceptance of Verizon Wireless's methodology for demonstrating its compliance with Section 310(b)(4) amounts to a special interpretation of the statute that differs radically from the stricter interpretation that the Commission enforces against smaller entities, new entrants and SDBs. In brief, the Commission is allowing Verizon Wireless to presume the citizenship of its shareholders from their mailing addresses. Verizon Wireless needs to inquire further only if the immediate shareholder is a pure nominee. Even then, it may presume citizenship from the mailing address of the immediate holder below the nominee. In contrast, new entrants and SDBs must obtain information that potential investors may not be willing to disclose and assess the citizenship of each of their investors throughout a multi-level chain of ownership. At each ownership level, SDBs must assess factors such as the insulation provided in the organizational documents of proposed investors that are limited partnerships or

limited liability companies and assess separately the citizenship of those exercising voting rights and the citizenship of those holding ownership rights.

Apart from the legal issues arising from the application of different interpretations of the statutory definition of "alien ownership" to different parties, this dual standard undercuts the Commission's diversification policies. In two instances during the course of the pleading cycle in this proceeding, the Commission has extended its "Verizon Wireless" interpretation to allow two other large publicly traded companies to assess the citizenship of their shareholders based on presumptions from shareholder addresses.[10] If the Commission is satisfied that a U.S. mailing address warrants a conclusive presumption of the citizenship of the interest-holders in these large entities, it must consider why it denies the same treatment to new entrants and SDBs for assessing the Section 310(b)(4) status of their investors.

The Commission allowed Verizon Wireless to presume citizenship from shareholder addresses because of Verizon Wireless's supposed but unstated "special circumstances." Yet, Verizon Wireless has abundant resources through which it could have conducted sample surveys in accordance with the Commission's general policies. Verizon Wireless also has a level of power and influence that would have facilitated obtaining the kind of multi-level ownership and voting rights analysis that the Commission requires less "special" companies to perform for each of their investors from a statistically valid sample of its investors.

SDBs and new entrants already face a severe disadvantage in access to capital, as the Commission repeatedly has acknowledged. Proportionate to their size and resources, SDBs and small businesses face difficulties greater by orders of magnitude than Verizon Wireless in

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[10] *Iridium Holdings LLC and Iridium Carrier Holdings, LLC, Transferors, and GHL Acquisition Corp., Transferee*, IB Docket No. 08-232, Memorandum Opinion and Order and Declaratory Ruling, DA 09-1809 (rel. Aug. 14, 2009); *Harbinger Capital Master Fund I, Ltd., and Harbinger Capital Partners Special Situations Fund, L.P.*, File No. ISP-POR-20080129-0002, *et al.*, Order and Declaratory Ruling, DA 09-1862 (rel. Aug. 24, 2009).

seeking to obtain from potential investors the detailed information that the Commission's general policies require about direct and indirect foreign ownership, foreign voting rights and owner-insulation status of potential investors. By effectively exempting Verizon Wireless and other large companies from those concerns, the Commission would further raise the barriers against SDBs and new entrants at their point of greatest vulnerability – access to capital.

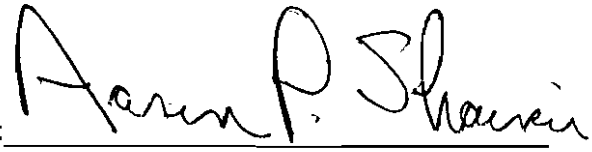
In sum, the Commission should ask itself the question that SDBs and new entrants will ask: If the Commission allows Verizon Wireless conclusively to demonstrate Section 310(b)(4) compliance from street addresses of its immediate investors because of its "special circumstances," why is it that the circumstances of SDBs and new entrants, which face far more formidable barriers in seeking access to capital, are not also "special"?

IV. Conclusion

Accordingly, for the foregoing reasons, CAPCC urges the Commission to institute an investigation into Verizon Wireless's sale of the Divestiture Assets and to deny the above-captioned applications, or at the least hold those applications in pending status until the culmination of the investigation.

Respectfully submitted,

CHATHAM AVALON PARK COMMUNITY COUNCIL

By: 

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August 27, 2009

APPENDIX 1

CAPCC Reply to Opposition to Petition to Deny

Verizon-AT&T Applications

WT Docket No. 09-104

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Office of the Secretary

In the Matter of	)	
	)	
Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless	)	WT Docket No. 09-104
	)	
	)	File Nos. 0003840313, *et al.*,
For Consent To Assign or Transfer Control of Licenses and Authorizations, and Modify a Spectrum Leasing Arrangement	)	ITC-ASG-20090552-00244, *et al.*
	)	File No. 0003487528
	)	

REPLY TO OPPOSITION TO PETITION TO DENY

CHATHAM AVALON PARK COMMUNITY COUNCIL
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SUMMARY

The Divestiture Applications cannot be granted until the Commission investigates the circumstances of the proposed AT&T-Verizon Wireless, AT&T - Centennial and Verizon Wireless-Atlantic Tele-Networks transactions together as a whole, given that the transactions would harm the public interest by further strengthening the wireless duopoly in this country. A full FCC hearing is required on the complete set of facts and circumstances surrounding all of the transactions.

First, a Commission investigation into the facts and circumstances surrounding this transaction, as well as the proposed sale of Centennial assets to Verizon Wireless by AT&T and the proposed Verizon Wireless-Atlantic Tele-Networks transaction, is fully warranted. The totality of the AT&T-Verizon Wireless response is that, in essence, AT&T and Verizon Wireless do not need to justify their actions to the Commission. This, of course, is wrong. When the two largest participants in the wireless market are swapping properties in a way that forecloses additional competition or new entrants; when there is no evidence that provides another reason for the transactions; and when it is apparent that Verizon Wireless was willing to sell at least some of the divested assets at prices well below their market value, there are significant questions about the transactions that the Commission should answer before it takes any action. This is the only chance the Commission will get to find out.

Second, it is plain that Verizon Wireless ignored the Commission's admonishment to assist socially disadvantaged businesses ("SDBs") in the divestiture process. Verizon Wireless made no effort to address the substantive issues that affect SDBs. Instead, it opted to use a process that was calculated to give the appearance of seeking SDB buyers without doing anything that would give an SDB a meaningful chance to be a successful bidder. The

Opposition, in fact, acknowledges both that SDBs face issues in obtaining financing ***and*** that Verizon Wireless adopted bidding requirements that effectively shut out SDBs for that very reason. Further, Verizon Wireless's supposed reasons for choosing AT&T over other bidders make no sense. When contrasted with the minimal actual public interest benefits of this transaction, Verizon Wireless's failure to address the Commission's strong policy in favor of diversity weighs heavily against grant of the Divestiture Applications. Congressional leaders have specifically asked the Commission to carefully review Verizon Wireless's actions here.

Third, Verizon Wireless glides over CAPCC's demonstration of the inadequacy of Verizon Wireless's Section 310(b)(4) showing and seeks to have the Commission forget about the foreign ownership limits of the Communications Act. If the Commission finds Verizon Wireless's "don't ask, don't tell" approach to foreign ownership compliance is adequate (1) it cannot apply such a standard just to Verizon Wireless, but must allow all applicants, in all services, to use the same "registered address" standard to demonstrate compliance with Section 310(b)(4); and (2) in doing so, the Commission necessarily will alter substantially its existing precedent on demonstrating compliance with Section 310(b)(4). The public impact of such a policy change would be significant. For example, this approach would allow foreign sovereign wealth funds to own and control U.S. communications companies simply by using a registered U.S. address. If the Commission consciously decides to adopt such a less restrictive interpretation of Section 310(b)(4), then it must apply to all applicants. CAPCC strongly objects, however, to special favorable treatment for a behemoth like Verizon Wireless when the Commission denies those benefits to socially disadvantaged businesses.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	WT Docket No. 09-104
	)	
Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless	)	File Nos. 0003840313, *et al.*, ITC-ASG-20090552-00244, *et al.* File No. 0003487528
	)	
For Consent To Assign or Transfer Control of Licenses and Authorizations, and Modify a Spectrum Leasing Arrangement	)	
	)	

To: The Secretary
Office of the Secretary
Federal Communications Commission

REPLY TO OPPOSITION TO PETITION TO DENY

Chatham Avalon Park Community Council ("Petitioner" or "CAPCC"), by its attorneys and in accordance with the Commission's Public Notice and CAPCC's Motion for Extension of Time filed on August 4, 2009, hereby submits this reply to the joint opposition of AT&T and Verizon Wireless (the "Opposition") to CAPCC's petition to deny (the "Petition") the applications for consent to assign or transfer control of licenses and authorizations and to modify a spectrum leasing arrangement under the above-captioned docket and file numbers. (collectively, the "Divestiture Applications").[1]

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[1] *See AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement,* WT Docket No. 09-104, Public Notice, DA 09-1350 (rel. June 19, 2009); Motion for Extension of Time of CAPCC, WT Docket No. 09-104, filed Aug. 4, 2009; Joint Opposition of AT&T Inc. and Verizon Wireless to Petitions to Deny or to Condition Consent and Reply to Comments, WT Docket No. 09-104, filed July 30, 2009 [hereinafter "*Opposition*"]; Petition to Deny of CAPCC, WT Docket No. 09-104, filed July 20, 2009 [hereinafter "*Petition*"].

As described in its Petition, CAPCC is a community-based organization located in and around Chicago, Illinois, with hundreds of members who are consumers of telecommunications services, some of which are offered by Verizon Wireless and AT&T. CAPCC and its members are concerned about the general impact of the increasing consolidation in the telecommunications marketplace and about the loss of what could be the last meaningful opportunity for socially disadvantaged businesses ("SDBs") to enter the wireless business.[2] CAPCC's concerns about the impact of this transaction on opportunities for SDBs is heightened because Verizon Wireless has not complied with existing Commission requirements for compliance with Section 310(b) of the Communications Act, even while the Commission has required strict compliance of SDBs seeking to obtain Commission authorization.

I. The Opposition Demonstrates That Verizon Wireless Disregarded the Commission's Admonition to Assist Socially Disadvantaged Businesses Seeking to Acquire the Divested Markets.

The *Verizon-Alltel Order* advised "Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture

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[2] In a footnote, the Opposition argues that CAPCC has not demonstrated that it has standing. *Opposition* at n. 68. As they do elsewhere in the Opposition, AT&T and Verizon Wireless provide no factual or legal support for their argument, and they are wrong about both the law and the facts. Under decades of Commission precedent, an organization like CAPCC can demonstrate standing by showing that its members are within the area served by one of the parties and will be affected by the consequences of Commission action in the proceeding. *See, e.g., San Francisco Unified School District*, MB Docket No. 04-191, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13327-28 (rel July 16, 2004); *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, RM-2847, Memorandum Opinion and Order, 82 FCC 2d 89 (rel. Oct. 17, 1980). CAPCC did just that, showing that it has "hundreds of members who are consumers of telecommunications services," including those "offered by Verizon Wireless and AT&T," and that those members are affected by the consequences of "increasing consolidation in the telecommunications industry," specifically the consolidation caused by the proposed transaction, including "fewer competitive services at higher consumer prices." *Petition* at 1-2. These claims, as required by the Commission, were supported by a specific affidavit from the President of CAPCC. Thus, there is no doubt as to CAPCC's standing.

Assets and/or accessing spectrum, to the extent possible."[3] CAPCC's Petition demonstrated that Verizon Wireless ignored this admonition, not just by entering into a proposed transaction that, in essence, would swap systems with its largest competitor, but by failing to take any real steps that would address the specific barriers faced by SDBs. AT&T and Verizon Wireless responded to the Petition by simply arguing that Verizon Wireless asked SDBs to bid; but, it did nothing meaningful to provide them with a real opportunity to succeed. This is not what the Commission intended in the *Verizon-Alltel Order*.

The Opposition describes a process that is calculated to give the appearance of seeking SDB buyers without actually giving them a reasonable chance to purchase the divested systems. For instance, Verizon Wireless claims that it asked the Minority Media and Telecommunications Council to identify businesses that might bid, that it asked an unusually large number of potential buyers to participate in the second round of bidding and that it provided information to SDBs before those SDBs had signed non-disclosure agreements or formally expressed interest.[4] By Verizon Wireless's own account, these efforts led to exactly one additional minority-controlled bidder (out of more than 70 bidders overall) and exactly one additional minority-controlled bidder (out of 20) in the second round of bidding.[5]

What Verizon Wireless did not do was to take any realistic steps that would have helped to overcome the acknowledged disadvantages that SDBs face in the financing marketplace. Despite Verizon Wireless's claims, there is nothing at all in the Opposition that contradicts any

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[3] *See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17518 (rel. Nov. 10, 2008) [hereinafter "*Verizon-Alltel Order*"], *reconsideration pending.*

[4] *Opposition* at 22-25.

[5] *Id.* at 22, 25.

of the factual statements in the CAPCC Petition.[6] Verizon Wireless did not provide a period of exclusive negotiation for SDBs, did not permit SDBs to bid without proof of full financing, did not give any SDBs a right of first refusal and did not choose to break the divested markets into smaller groupings to encourage bids by smaller businesses. All Verizon Wireless did, according to the Opposition, was tell SDBs that they could bid on the same terms as AT&T (and even that proved to be illusory).

Perhaps aware that the steps Verizon Wireless says it took were mere window dressing, Verizon Wireless and AT&T provide excuses for the failure to succeed in attracting a successful minority bid – Verizon Wireless wanted to be sure the transaction would be approved promptly and SDBs lack the same access to financing as AT&T and Atlantic Tele-Network, Verizon Wireless's chosen recipient of the remainder of the divestiture systems.[7] However, neither of these claims makes any sense.

First, a transaction with AT&T, as shown by the petitions to deny filed in this proeeeding, raises significant issues that would not be raised by a transaction with an SDB that does not have wireless operations, or that has only a modest wireless footprint. A non-AT&T transaction would not raise questions about potential anticompetitive consequences, about whether existing CDMA service would be maintained or about roaming. An SDB, unlike AT&T, would not be the subject of a pending investigation by the Antitrust Division of the Justice Department, or of an inquiry from the Commission about whether it was engaging in anticompetitive behavior in connection with the iPhone and the App Store. In other words, a divestiture to an SDB would

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[6] The Opposition suggests that CAPCC did not provide sufficient factual support for its claims. *Id.* at 20, n.72. This is incorrect because the CAPCC Petition was supported by a declaration that supported CAPCC's specific claims. Equally significant, Verizon Wireless does not deny the key elements of those claims, and specifically affirms that it insisted on a financing condition that was likely to shut out SDBs. *Id.* at 25-26.

[7] *Id.* at 25-26.

raise almost none of the questions that are open in this proceeding, and likely could be approved as quickly as – or more quickly than – the proposed transaction with AT&T.

Second, and as explained in CAPCC's Petition, by demanding financing before it would negotiate a transaction, Verizon Wireless effectively shut out SDBs.[8] Verizon Wireless knows this is true, and even acknowledges that SDBs have more difficulty than other buyers in obtaining financing before the deal terms are set.[9] By insisting on pre-approved financing, Verizon Wireless consciously ensured that it would not give SDBs an opportunity to secure any of the divested systems.[10] At the same time, financing will not delay grant of an application so long as it is secured prior to the time an application is filed. Whether or not an applicant has financing at the time it agrees on the terms of the transaction is irrelevant to Commission consideration.

The Opposition claims that Verizon Wireless's failure to "implement mechanisms to assist" SDBs should not be considered because doing so was not a specific condition of the *Verizon-Alltel Order*.[11] This claim misapprehends the impact of the Commission's admonition to address these issues. While it was not a specific condition, it also is plain that the Commission concluded that Verizon Wireless's willingness to address the barriers faced by SDBs is an issue

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[8] *Petition* at 6.

[9] *Opposition* at 26-27.

[10] Verizon Wireless and AT&T claim that "requiring such committed financing is customary[.]" *Opposition* at 26. That claim, however, is not supported, or even mentioned in the declaration from Morgan Stanley, Verizon Wireless's advisor on the transaction. While it is customary to require financing before final transaction documents are executed, parties often agree on the terms of a transaction before financing is arranged.

[11] *Opposition* at 19. The Opposition argues further that consideration of these issues is precluded by the doctrine that the Commission "may not consider whether sale to a different buyer would be preferable." *Id.* This is wrong. CAPCC is not asking Verizon Wireless to sell to another buyer (although, as described in the Petition and this reply, there are good reasons to reject AT&T). Rather, CAPCC is asking the Commission to require Verizon Wireless to engage in a

that must be considered as part of the public interest analysis in this proceeding. Moreover, the *Verizon-Alltel Order* specifically states that interested parties should wait until this proceeding to address questions concerning "the qualifications of the entity(ies) acquiring the Divestiture Assets and whether the specific transaction is in the public interest, including diversity issues."[12]

The public interest impact of Verizon Wireless's decision to disregard the Commission's intent that the divestiture transaction create opportunities for SDBs is underlined by the Congressional response to the proposed transaction with AT&T. Twelve members of Congress have written to the Commission to express their concern that Verizon Wireless adopted a process that effectively prevented SDBs from making successful bids and to ask the Commission and the Department of Justice to seek to have Verizon Wireless "open good faith negotiations with small business owners prior to migrating all or most of these valuable assets from one behemoth company to another."[13] The letter further notes that "[p]roceeding with divestitures that only shuffle assets among large media companies is inconsistent with the FCC's public interest mandate."[14]

Given the Commission's repeated conclusion that increasing diversity is a vital public policy goal, one mandated by Congress in Sections 257, 309(i) and 309(j) of the Communications Act and pursued by the Commission for years, as well as the specific

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process that would advance, rather than hinder, the Commission's own goals of increasing diversity.

[12] *Verizon-Alltel Order*, 23 FCC Rcd at 17518.

[13] Letter of the Hon. Sanford D. Bishop, Jr., the Hon. Corinne Brown, the Hon. Danny K. Davis, the Hon. Marcia L. Fudge, the Hon. Eddie Bernice Johnson, the Hon. Carolyn C. Kilpatrick, the Hon. Sheila Jackson Lee, the Hon. John Lewis, the Hon. Gwen S. Moore, the Hon. Grace F. Napolitano, the Hon. Charles B. Rangel and the Hon. Diane E. Watson to the Hon. Michael Copps, May 20, 2009 at 1 [hereinafter "*Congressional Letter*"]. Commissioner Copps, in response, has noted that the issues raised in the Congressional letter will be considered as part of the Commission's public interest analysis. *See, e.g.*, Letter of the Hon. Michael Copps to the Hon. Corrine Brown, July 2, 2009.

Congressional concerns about this transaction, Verizon Wireless's failure to heed the Commission's request in the *Verizon-Alltel Order* has significant public interest implications.[15] Verizon Wireless's decision not to advance this vital goal – despite specific instruction from the Commission – weighs heavily against a finding that the transaction is in the public interest. In fact, Verizon Wireless's cynical handling of the divestiture process, in light of the Commission's admonition, is a rather telling indication of its commitment to diversity.

Moreover, there is almost nothing to weigh on the other side of the equation. Most of the claimed benefits of the transaction relate to increasing choices for wireless consumers, but those are benefits of the divestiture, which already was required, not of a sale to AT&T.[16] Since all of these benefits already are assumed by the *Verizon-Alltel Order*, claiming them here is, in effect, the same as claiming that there will be public interest benefits because AT&T will comply with the number portability rules in the divested markets. Similarly, there is nothing unique about AT&T's claim that it will expand availability of 3G networks in Alltel markets, since every carrier continuously expands the availability of advanced services to meet demand. This is not even a result of the divestiture, but merely an inevitable consequence of the state of the wireless marketplace in the United States.

In practice, the most significant benefit of the transaction may be that it will decrease AT&T's roaming costs. AT&T, however, makes no promise that it will reduce consumer charges in response to these reduced costs, so the public interest impact of even that benefit is limited at best. When balanced against Verizon Wireless's willful disregard of the

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[14] *Congressional Letter* at 1.

[15] *Petition* at 22.

[16] *See Opposition* at 3 (describing "expanded choices of services and features, diverse rate plans and handsets with advanced capabilities" and "the benefits of vigorous competition" as public interest benefits of the transaction).

Commission's intention to expand diversity and, tellingly, Verizon Wireless's transparent efforts to make it appear that it gave SDBs consideration when it had no intention of actually doing so, this benefit is nowhere near sufficient to justify authorizing this transaction.

II. The Facts Justify an Investigation into the Circumstances of Verizon Wireless's Proposed Sales of the Divestiture Assets.

CAPCC's Petition showed that an investigation into the circumstances of the proposed transaction is necessary to determine whether Verizon Wireless and AT&T engaged in anticompetitive or otherwise inappropriate behavior in the negotiations that led to this transaction, the proposed sale of Centennial assets from AT&T to Verizon and the proposed sale of Alltel assets to Atlantic Tele-Networks. The Opposition responds to that showing with a single paragraph that does not address the basis for that request, but instead claims that, in essence, Verizon Wireless and AT&T can do whatever they want to do.[17]

While Verizon Wireless and AT&T might wish this were true, there are significant questions about how Verizon Wireless conducted itself in selecting the buyers for the Divestiture Assets, and that the market swap proposed by Verizon Wireless and AT&T suggests an intent to divide the wireless market between the two largest competitors, not to compete with each other. These are matters that are well within the Commission's investigative power and, equally important, are not answered by the record before the Commission in this proceeding.

For instance, CAPCC's Petition raises three specific questions to be considered in an investigation: (1) whether the two Verizon Wireless-AT&T transactions are linked to each other; (2) whether Verizon Wireless already had identified AT&T as the buyer before it formally started the divestiture process; and (3) whether other bids that Verizon Wireless did not accept would have, alone or in combination, yielded a higher purchase price. The Opposition does not

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[17] *Id.* at 21.

respond to any of these the questions, and does not even claim that AT&T submitted the highest bid or that AT&T and Atlantic Tele-Networks were the only companies that met Verizon Wireless's self-imposed criteria for choosing buyers for the divested markets.[18] The Opposition also fails to explain why Verizon Wireless would sell some assets to Atlantic Tele-Networks at prices that appear to be far below market prices, but would make no similar concessions to SDBs for any markets, or to deny that Verizon Wireless told Congressional staffers that it was compelled to conduct a pure auction, when such an auction was not required by the *Verizon-Alltel Order*.[19]

Given the unwillingness of AT&T and Verizon Wireless even to respond to these questions, and the significant competitive consequences that could arise from allowing AT&T and Verizon Wireless to divide the wireless market between themselves, it is entirely appropriate for the Commission to engage its investigative powers under Section 403 of the Communications Act to obtain the answers. The public and the Commission are entitled to some transparency about these divestiture efforts; not the total obfuscation offered by Verizon Wireless and AT&T.

Contrary to the claims in the Opposition, Section 403 of the Communications Act is a broad grant of authority, and is appropriately invoked to address any issue of significance that is of concern to the Commission.[20] A Section 403 investigation is particularly appropriate when, as here, the relevant parties have not willingly provided the information necessary to address the

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[18] *See, e.g., id.* at 26-27.

[19] *See Petition* at n. 21.

[20] 47 U.S.C. § 403; *see also Impact of Arbitron Audience Ratings Measurements on Radio Broadcasters*, MB Docket No. 08-187, Notice of Inquiry, FCC 09-43, 24 FCC Rcd 6141, n.1 (rel. May 18, 2009) (explaining that Sections 4(i) and 403 give "the Commission broad authority to initiate inquiries . . ."); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket 05-255,Twelfth Annual Report, 21 FCC Rcd 2503, 2613 (rel. March 3, 2006); *Broadcast Localism*, MB Docket No. 04-233, Notice of Inquiry, 19 FCC Rcd 12425 (rel. July 1, 2004).

issues. The imperative to obtain full information also is very strong when, also as here, there may be no practical remedy if the Commission does not investigate the issues fully before it acts on the underlying applications. Consequently, the Commission would be fully justified to invoke its Section 403 authority and investigate all of the circumstances involved in the proposed Verizon Wireless, AT&T and Atlantic Tele-Networks transactions before taking any action.

III. If It Accepts Verizon Wireless's Interpretation of Section 310(b)(4), the Commission Must Apply It to All Applicants and, in Doing So, the Commission Will Substantially Alter Its Present Policy.

In its Opposition, Verizon Wireless glides over CAPCC's demonstration of the inadequacy of Verizon Wireless's Section 310(b)(4) showing and seeks to have the Commission forget about Section 310(b)(4) as well, because neither Verizon Wireless nor the Commission's *Verizon-Alltel Order* have any rational answer to that analysis. Verizon Wireless has not provided the Commission with any reasonable basis for applying to Verizon Wireless a different interpretation of Section 310(b)(4) than it applies to every other applicant. The Commission must not allow a special statutory interpretation for the sole benefit of Verizon Wireless to stand. Doing so would allow Verizon Wireless access to foreign capital and investment under terms far more liberal than those the Commission has specifically denied to new entrants and SDBs and would contravene the Commission's stated policies to encourage the entry of SDBs and new entrants into the media and telecommunications industries that the agency regulates.

Verizon Wireless presumed citizenship for purposes of its Section 310(b)(4) showing from the "registered addresses" of the "beneficial owners" of its shares, without any further inquiry.[21] In referring to the "beneficial owner" of a share, Verizon Wireless means not the

[21] Verizon Wireless relies upon letter it filed on April 8, 2008, in WT Docket No. 07-208 (the "April 2008 Letter"). In the April 2008 Letter, Verizon Wireless had a third party assess the foreign ownership of both Verizon and Vodafone based on (1) "registered addresses" (that is, mailing addresses) provided by registered stockholders and (2) mailing addresses provided to